

June 25, 2021

**RE: Concerned Citizens of St. John the Baptist Parish  
Request for Information MC-421-21  
United States**

Excellency:

I have the honor of addressing Your Excellency on behalf of the Inter-American Commission on Human Rights with respect to the request for information concerning the situation of the Concerned Citizens of St. John the Baptist Parish in the United States.

I also have the honor of transmitting to you the pertinent parts of the response submitted by the applicants concerning the matter cited above. I respectfully request that your government submit the observation it deems relevant within 10 days of the date of the transmission of the present communication, in addition to the following information:

- a. its observations on the information presented by the applicants;
- b. provide information about the current state of health of the proposed beneficiaries, in particular, levels of individuals with cardiac symptoms, cancer or COVID-19 in St. John the Baptist Parish, as well as measures adopted by the State in response to the health-related risks caused by the Denka Performance Elastomer Neoprene facility;
- c. any additional information considered to be relevant in light of Article 25 of the IACHR's Rules of Procedure.


The Honorable Antony J. Blinken  
Secretary of State  
VIA His Excellency Bradley A. Freden  
Interim Permanent Representative of the United States  
to the Organization of American States  
Washington, D.C.

Enclosure

6/25/2021-MK-5030244

I wish to inform you that the contents of that note will be placed before the Commission for the relevant purposes.

Please accept, Excellency, the assurances of my highest consideration,

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Marisol Blanchard  
Assistant Executive Secretary



TULANE LAW SCHOOL

TULANE ENVIRONMENTAL LAW CLINIC

June 9, 2021

Via IACHR Individual Petition System Portal (<http://oas.org/ipsp>) to:

Mario López-Garelli

Adviser to the Executive Secretary

Inter-American Commission on Human Rights

Re: Response to Request for Additional Information on Request for Precautionary Measures submitted by the Concerned Citizens of St. John, MC-421-21, United States

Dear Mr. López-Garelli:

On behalf of the Concerned Citizens of St. John ("Applicant"), we respectfully submit this response to your request for additional information regarding Applicant's May 25, 2021 request for precautionary measures (MC-421-21, United States). You requested: *"more detailed information about the domestic remedies sought by the applicants in relation to the alleged situation. In particular, indicate the petitions, cases, and/or complaints that have been presented and their respective outcomes."* This letter provides that information, presented in two sections: **1)** cases in the United States' ("U.S.") state and federal judicial systems, and **2)** petitions and administrative comments (or the lack of opportunity for such comments) in the U.S. administrative law systems, before both state and federal agencies. We appreciate this opportunity to present this additional information and will provide additional support, per your request, should such information become available.

### **1) Judicial Cases Regarding the Denka/Dupont Facility**

The Applicant itself, Concerned Citizens of St. John, has not filed any litigation in the U.S. court system regarding the chloroprene emissions from the Denka/Dupont facility. However, to give the Commission a full picture of the inadequacy of current litigation to resolve the serious and urgent situation in St. John the Baptist Parish, we provide here descriptions of litigation brought by others that we are aware of. The domestic court cases listed below involve individuals, including members of the Applicant organization, filing private civil lawsuits in their individual capacities.

#### **A. *Robert Taylor, Jr., et al. v. Denka Performance Elastomer and E.I. Dupont De Nemours and Co. ("Taylor v. Denka")*, United States District Court, Eastern District of Louisiana**

*Taylor v. Denka* is a civil lawsuit in United States federal court that originally sought monetary damages and injunctive relief against the owners, former and current, of the Denka/Dupont facility. Several of the named plaintiffs in the matter are members of the Concerned Citizens of St. John. Currently, the amended lawsuit seeks only injunctive relief

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against Denka Performance Elastomer, LLC in the form of “abatement of chloroprene releases such that concentrations of chloroprene in the defined area never exceed  $0.2 \mu\text{g}/\text{m}^3$ .”

While the relief sought by the plaintiffs in the *Taylor v. Denka* lawsuit could address chloroprene emissions from the Denka/Dupont facility (though to a lesser degree than the Applicant seeks in its Request for Precautionary Measures), the time delays alone mean the lawsuit cannot address the serious and urgent threat to the life, health, and personal security of the Beneficiaries. This matter was filed in June 2017, so is already four years old; it is currently set for trial in April 2022.

Moreover, even should the matter actually go to trial and the plaintiffs prevail, additional delay on any relief granted can be expected from the lengthy (*i.e.* potentially years long) appeal process that Denka and Dupont would likely seek. No interim relief in the form of a temporary restraining order or preliminary injunction has been issued that requires abatement of chloroprene emissions during the pendency of the litigation. The length of delay means that this case cannot address the serious and urgent situation created by the Denka/Dupont facility.

Moreover, no outcome of this lawsuit would compel the State, either in the form of the U.S. Environmental Protection Agency (“EPA”) or the Louisiana Department of Environmental Quality (“LDEQ”), to take any of the actions requested by the Applicant in the Request for Precautionary Measures. The Applicant’s Request for Precautionary Measures seeks a more health protective regulatory limit on chloroprene emissions, continued monitoring to ensure compliance with that standard, and relocation of the schoolchildren on the fence line of the facility – all things unaddressed by the demands in the *Taylor v. Denka* lawsuit.

**B. *Kenda Bovie, individually and on behalf of her minor child, Lance Dewey v. St. John the Baptist Public School Board*, 40<sup>th</sup> Judicial District Court, State of Louisiana**

In *Bovie v. St. John the Baptist Public School Board*, an individual resident of St. John the Baptist Parish filed an action in Louisiana state court against the St. John the Baptist Parish school board, seeking action from the School Board to protect the children at Fifth Ward from exposure to chloroprene. This action ended in a consent judgment in which the School Board agreed to make requests of Denka, Dupont, and state agencies to abate the chloroprene emissions and create an enforceable limit of  $0.2 \mu\text{g}/\text{m}^3$ . Those entities had no obligation to comply with these requests and that the School Board had no ability to enforce that they do so. An indication of the significant limitations of the unenforceable requests is that the School Board sent the letters communicating those requests in January 2018, and to date, no action has been taken by Denka or the state agencies pursuant to those requests. In short, the outcome of *Bovie v. St. John the Baptist School Board* did not create any requirement for (or action from) the State, at either the federal or state level, to move the children at Fifth Ward away from the Denka/Dupont facility or otherwise protect them from chloroprene exposure.

### **C. Other Individual State Court Lawsuits**

A number of individual members of applicant Concerned Citizens of St. John have filed civil tort lawsuits against Denka and Dupont seeking damages for injuries, including injuries involving increased risk of cancer due to chloroprene exposure. These lawsuits merely seek monetary relief from the owners of the facility and will not compel the State, whether EPA or LDEQ, to create and enforce an emissions standard for chloroprene. These matters are still pending in Louisiana state court.

### **2) Petitions and Administrative Comments**

#### **A. Petition for Emergency Action under the Clean Air Act, 42 U.S.C. § 7603 *et seq.*, to Abate the Imminent and Substantial Danger to St. John the Baptist Parish, Louisiana Residents from Toxic Air Pollution *and* Petition for Rulemaking under the Clean Air Act, 42 U.S.C. § 7412, to Set Health-Protective Toxics Emission Standards**

On May 6, 2021, the Applicant sent a petition to the United States EPA requesting that the agency “use the full extent of its authority, including its emergency powers under the Clean Air act to abate the imminent and substantial danger to St. John residents from chloroprene ... emissions.” The EPA’s emergency powers under the Clean Air Act allow that

[T]he Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary.<sup>1</sup>

Specifically, the petition asks EPA to take actions that include *a)* enforcing compliance with the existing Administrative Order on Consent,<sup>2</sup> *b)* using its rulemaking authority to both set an emissions standard for chloroprene emitters and provide permanent fence-line monitoring, *c)* exercising oversight authority over the Clean Air Act permitting process for the Denka/Dupont facility, and *d)* initiating a civil rights investigation into the disparate impact on an African-American community caused by LDEQ’s failure to abate the chloroprene hazard from the Denka/Dupont facility.

Petitions for rulemaking are generally a necessary step for citizens to spur action from U.S. federal agencies.<sup>3</sup> The relief requested from EPA is consistent with, though narrower than, the precautionary measures requested from this Commission. But EPA has no set deadline for

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<sup>1</sup> 42 U.S.C. § 7603.

<sup>2</sup> See Concerned Citizens of St. John’s Request for Precautionary Measures at 14-15.

<sup>3</sup> See U.S. Administrative Procedure Act, 5 U.S.C. § 101, *et seq.*

responding to the petition for rulemaking and a good deal of discretion in its response, so that any outcome is uncertain as to both timing and substance.

**B. Unavailability of Review of Title V Clean Air Act Permits for the Denka/Dupont Facility**

The Louisiana Department of Environmental Quality's ("LDEQ") decision to allow the Denka/Dupont Facility to operate under expired permits has precluded the Applicant from engaging in public comment and judicial review of LDEQ's Clean Air Act permits to the Denka/Dupont Facility. As noted in the Applicants' Request for Precautionary Measures, Denka Performance Elastomer, LLC filed its applications to renew those permits as long ago as 2016, and LDEQ has failed to take action on that renewal. To do so would require a public notice and comment period, which would allow the Applicants to submit public comments demanding an enforceable limit on the facility's chloroprene emissions. This would also give the Applicants a chance to challenge those permits in Louisiana state court under the law that allows for judicial review of LDEQ's permitting actions should the LDEQ not implement the Applicants' requests. The failure of LDEQ to act on the renewal of those permits deprives the Applicant of a potential domestic avenue for addressing the chloroprene emissions that threaten their rights to life, health, and personal security.

**Conclusion**

Thank you for this opportunity to provide additional detail on the domestic remedies sought by the Applicant to address the serious and urgent threat to the rights to life, health, and personal security created by the chloroprene emissions from the Denka/Dupont facility in St. John the Baptist Parish, Louisiana. Please let us know if the Commission requires additional information on these remedies, including specific legal pleadings, or other additional information related to the request.

Respectfully submitted,

*Devin Lowell*

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